

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MAXIE VICK

Claimant

VS.

STATE OF KANSAS

Respondent

Self-Insured

)
)
)
)
)
)
)

Docket No. 183,179

ORDER

Claimant appeals from an Award and a Nunc Pro Tunc Order entered by Assistant Director David A. Shufelt on November 30, 1995 and December 19, 1995, respectively. The Appeals Board heard oral argument on March 21, 1996.

APPEARANCES

Claimant appeared by and through his attorney Frank D. Taff of Topeka, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney Kathryn D. Myers of Topeka, Kansas.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award.

ISSUES

The Assistant Director, acting in the capacity of a special administrative law judge, found claimant suffered a compensable injury and entered an award for permanent partial disability benefits based upon the agreed functional impairment rating of 6 percent to the body as a whole. Claimant seeks review of that finding concerning the nature and extent of claimant's disability, asserting that claimant is entitled to an award based upon a work disability. In addition, claimant appeals the denial of vocational rehabilitation benefits. Those are the issues before the Appeals Board for purposes of review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and considered the briefs and arguments of the parties, the Appeals Board finds:

The Award entered by the Special Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law enumerated in the Award by the Special Administrative Law Judge are found to be accurate and appropriate and are hereby adopted by the Appeals Board as its own as if specifically set forth herein. The Appeals Board agrees that claimant has not sustained his burden of proof that his December 9, 1994 termination from his employment with respondent was in any way related to his injury of February 26, 1993. The presumption of no work disability found in K.S.A. 1992 Supp. 44-510e(a) has not been overcome by the evidence in this case.

Vocational rehabilitation benefits at the expense of the respondent should likewise be denied. Claimant returned to work with respondent earning a comparable wage following his injury. He continued to work for respondent performing his regular job duties with certain accommodations within his restrictions until he was allowed to resign on December 9, 1994. As found by the Special Administrative Law Judge, the claimant never advised respondent that he was unable to perform his job duties due to the accident, prior to his resignation. Were it not for the fact that claimant resigned his position with respondent for reasons unrelated to his injury, claimant would be earning a wage comparable to that which he was earning at the time of his injury. Accordingly, an award for vocational rehabilitation benefits would not be appropriate.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge David A. Shufelt dated November 30, 1995 as corrected by Nunc Pro Tunc Order dated December 19, 1995 should be, and is hereby, affirmed in all respects and the orders contained in said Award and Nunc Pro Tunc Order are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frank D. Taff, Topeka, KS
Kathryn D. Myers, Topeka, KS
David A. Shufelt, Special Administrative Law Judge
Philip S. Harness, Director